

RECEIVED  
FEC MAIL  
OPERATIONS CENTER

2005 NOV 10 A 9:49

Perkins  
Coie

607 Fourteenth Street N.W.  
Washington, D.C. 20005-2011  
PHONE: 202.628.6600  
FAX: 202.434.1690  
www.perkinscoie.com

November 9, 2005

Delbert K. Rigsby, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 5504

Dear Mr. Rigsby:

On behalf of our clients, Karoly Law Offices, P.C., John Karoly and Heather Kovacs, we write in response to the Commission's findings of reason to believe that violations occurred in the above-referenced matter.

Because the complaint was entirely unsubstantiated, the Commission should have dismissed it immediately. Because the evidence available to the Commission contradicts the complaint's unsupported allegations, the Commission should dismiss it now. We respectfully request that the Commission close this matter immediately and take no further action.

## I. STATEMENT OF FACTS

Jonathan Weiss is a disgruntled former employee of Karoly Law Offices, P.C. He was terminated for cause in November 2003. He filed a claim for unemployment compensation which the firm opposed, and which Pennsylvania state authorities rejected. He did not file the instant complaint until July 31, 2004 – almost a year after the alleged events he purports to describe, and only after the firm successfully opposed his claim for unemployment benefits.

[59112-0001/DA053110.050]

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · HONG KONG · LOS ANGELES  
MENLO PARK · OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2005 NOV 10 A 11:57

29044243397

November 9, 2005

Page 2

Mr. Weiss alleges that various individuals associated with the firm, including Ms. Kovacs, made contributions, for which they were reimbursed at the direction of John Karoly. He identifies eight individuals who supposedly made contributions in the name of another. *See* Compl. App. A. He suggests, although he is "not certain", that four other individuals made such contributions also. *See id.*

While Mr. Weiss repeatedly tries to indicate personal knowledge of these alleged transactions, a close examination of the complaint shows that there is none. He initially says that he "did witness the office employees re-imbursement," but he later says that he understood "from others at Karoly Law Offices that they were all told to write personal 'donations' for which they would be reimbursed ..." Compl. at 1. He admits that he "was not present at work on the day this request was made," and he does not identify the unnamed "others" who supposedly told him that their contributions were to be reimbursed. *Id.*

Mr. Weiss describes seeing two contribution checks from firm employees. However, the complaint shows that he did not base his claim of a reimbursement scheme on anything he actually saw. Rather, he based it on the inference he drew from the fact that Ms. Kovacs gave one of the checks. *See id.* "The reason I know these were directives by Mr. Karoly is that one of the checks written by his secretary, Ms. Heather Kovacs, is a Republican and an avid supporter of the current president, and wrote the check simply based on her dependence on her work and relationship with Mr. Karoly [*sic*]." *Id.*

Mr. Weiss claims that Jayann Brantley "was instructed by Mr. Karoly to reimburse the campaign money." *Id.* However, he presents no basis for this claim other than the fact that she was a secretary at the firm. *Id.* Finally, Mr. Weiss was required to rely on "review and research on your public website" to identify the supposedly reimbursed contributions. *Id.* at 2. Without explanation or discrimination, he alleges that every contribution received on September 30, 2003, from a firm employee was reimbursed. *Id.* App. A.

The complaint is otherwise filled with innuendo. All of it is made to sound sinister, while presenting no actual evidence of any violation. Mr. Weiss says that John Karoly's sons collected checks "potentially from clients of the law firm." *Id.* at 1. (In fact, Mr. Karoly's two sons were away at law school and college at the time.) Beyond alleging that the Karolys raised the contributions, which would have been perfectly lawful even if it had occurred, he presents no evidence of illegality. He says he is "unsure" if any reimbursement occurred, without saying why anyone would think it

November 9, 2005

Page 3

had in the first place. Compl. at 1. He tries to impugn Mr. Karoly with the supposedly incriminating fact that Mr. Karoly held a fundraising event in July and invited his clients. *Id.* He describes Mr. Karoly as "a very powerful figure within the local Democratic Party establishment" who "in the past had entire hard drives purposefully wiped-out and documents 'disappear.' *Id.* He provides no evidence or further detail as to any of this.

The respondents presented the Commission with direct evidence to refute Mr. Weiss's allegations. They submitted affidavits attesting that their contributions were not reimbursed. Ms. Kovacs submitted not one but two statements denying that her contribution was reimbursed. In the second statement she presented evidence of Mr. Weiss's animus, and denied his claim that he had spoken to her about the reimbursement, which Mr. Weiss had relayed in an "addendum" to his complaint.

Nonetheless, the Commission found reason to believe that violations of the Federal Election Campaign Act occurred. The Factual and Legal Analysis accepted the complaint's unsupported allegations uncritically, including Mr. Weiss's unsupported and contradicted assertion that he "witnessed the office employees' reimbursement." Karoly Law Offices, P.C., Factual and Legal Analysis, MUR 5504, at 4. It disregarded the donors' direct rebuttals of the complaint's central charge, contending that "[w]hile it might be said that the statements address the central allegation that the contributions were reimbursed, their terseness leaves room for other possibilities, such as that the funds were advanced, rather than reimbursed." *Id.* (The complaint did not allege that any funds were advanced, and indeed specifically alleged that the contributions were "later reimbursed with company funds.") Finally, it noted that "none of the law firm employees or their spouses" had given previously to a federal candidate, and found this to be evidence of a violation. *Id.*

## II. LEGAL DISCUSSION

For the Commission to find reason to believe that a violation occurred, a complaint must set forth sufficient specific facts which, if proven true, would actually constitute a violation. *See* Commissioners Mason, McDonald, Sandstrom, Smith, Thomas and Wold, Statement of Reasons, MUR 5141; Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960.

A complaint must differentiate between statements based upon personal knowledge, and those based upon information and belief. *See* 11 C.F.R. § 111.4(c) (2005). Unwarranted legal conclusions from asserted facts will not be accepted as true. *See*

November 9, 2005

Page 4

Statement of Reasons, MUR 5141. Credibility is weighed neither in favor of the complainant nor of the respondent, although the complaint may be dismissed if its allegations are refuted with sufficiently compelling evidence. *Id.*

These principles are well illustrated by the Commission's dismissal of the central charge in MUR 5304, a case of alleged contributions in the name of another involving congressional candidate Dennis Cardoza. The complaint presented a series of contributions made by Cardoza's California state assembly committee to various California nonfederal political committees, which in turn made contributions to Cardoza's congressional campaign. See First General Counsel's Report, MUR 5304, at 4. Some of the contributions from the Cardoza assembly committee were made within days of subsequent contributions by the recipients to the Cardoza congressional committee. *Id.*

Nonetheless, the Commission found no reason to believe on the core charge of contributions in the name of another. The General Counsel's Report set forth the standard for summary dismissal, adding: "[T]he alleged facts must present something that is, in the broad sense, 'incriminating' ..." *Id.* at 8 (quoting *DSCC v. FEC*, 745 F. Supp. 742, 746 (D.D.C. 1996)). It then noted: "The only facts provided by Complainant, derived from public disclosure records, show a series of contributions between respondents that are legal on their face." First General Counsel's Report, MUR 5304, at 8-9. Finding that the complaint hinged on speculation and unwarranted legal conclusions, and that "the responses all specifically denied the existence of any illegal scheme," the General Counsel recommended dismissal of the complaint. *Id.* at 9. The Commission agreed.

The same outcome is warranted here. In this matter, the reason-to-believe finding rests on three basic elements: (1) the complainant's assertion of personal knowledge that violations occurred; (2) perceived inadequacies in the respondents' responses; and (3) the fact that none of the respondents had previously made contributions to federal candidates.

The first element – the assertion of personal knowledge – is not what it seems to be. A close examination of the complaint reveals that Mr. Weiss presents no actual, first-hand knowledge of any contribution scheme. He simply assumes that such a scheme occurred, because he saw a check from Ms. Kovacs and assumed that she was a Republican who would never have made the contribution without being reimbursed. While credibility cannot be weighed in favor of either the respondent or the complainant in the first instance, it is hard to ascribe such credibility to Mr. Weiss's

November 9, 2005

Page 5

tacked-on recollection of an admission by Ms. Kovacs, which he apparently chose to omit when he first drafted his complaint. In the end, Mr. Weiss's complaint is based on mere speculation and unwarranted legal conclusions.

The second element – the supposed gaps in the respondents' denials – is not what the Factual and Legal Analysis makes it out to be. All of the involved individuals have flatly denied being reimbursed for their contributions; Ms. Kovacs later elaborated on her denial. None of them can fairly be accused of playing word games. None faced any accusation that "the funds were advanced, rather than reimbursed." Karoly Law Offices, P.C., Factual and Legal Analysis, at 4. They had no reason to respond to such an accusation. They were responding to a complaint that used variations of the word "reimburse" seven times, and that said flatly that they "were *later* reimbursed with company funds ..." Compl. at 1 (emphasis added). Mere speculation is the only basis for discrediting their denials, which are compelling enough to refute the complaint's allegations.

Finally, the third element – the respondents' giving history, or supposed lack thereof – is flatly contradicted by the General Counsel's reasoning in MUR 5304. Like the contributions made in that matter, the contributions made by the respondents in this matter "are legal on their face." First General Counsel's Report, MUR 5304, at 8-9. There is nothing illegal or incriminating about making a contribution to a federal candidate for the first time. There is nothing inherently suspicious about making a contribution to a federal candidate for the first time. More is required in order to proceed with an investigation. Yet again, the gap is filled with "mere speculation" and "unwarranted legal conclusions." *Id.* at 9.

After a careful examination of the complaint, and a proper review of the denials, this matter never should have proceeded past the reason-to-believe stage. It is not too late for the Commission to correct that error. It may still dismiss the complaint, and take no further action.

### III. CONCLUSION

For the foregoing reasons, Respondents respectfully request the Commission to close this matter and take no further action.

November 9, 2005  
Page 6

Very truly yours,

Handwritten signatures of Marc E. Elias and Brian G. Svoboda.

Marc E. Elias  
Brian G. Svoboda

Counsel to Respondents Karoly Law Offices, P.C., John Karoly  
and Heather Kovacs